IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14320 of 2006To

SPECIAL CIVIL APPLICATION No. 14322 of 2006

with

SPECIAL CIVIL APPLICATION NO 14404 TO 14406 OF 2006

For Approval and Signature:
HONOURABLE Mr. JUSTICE H.K. RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEMABHAI ABAHYSINH BARIA & 2 - Petitioner(s)
Versus
BHARAT SANCHAR NIGAM LTD., THRO' GENERAL MANAGER & 1 - Respondent(s)

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Appearance :
MR TEJAS M BAROT for Petitioner(s) : 1 - 3.
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 25/07/2006

ORAL JUDGMENT

1. Heard learned Advocate Mr. Mihir Thakor with Mr. Tejas M. Barot for petitioners in this group of petitions. This group of petitions was earlier circulated before the service bench of this Court (Coram : Hon'ble Mr. Justice D.H.Waghela,J.) on 21.7.2006. The order passed is reproduced as under:

> "Although there is no mention of any labour law in the cause title and the learned counsel is thoroughly confused in his submissions about the grievance and alleged violation of any particular law or rules, he asserted and insisted that these were matters under the labour laws and may be sent for hearing by the appropriate Bench. Accordingly, at the instance of the learned counsel, the office is requested to place these matters before the Court taking up labour matters.

> Such practice of circulating the matter for admission and urgent orders in the form of service matter and then insisting upon its transfer to another Bench is deprecated in view of the waste of time and energy, not to mention the harmful effect likely to be caused to the unwary petitioners."

2. Before the service bench of this Court, contention was raised by the petitioners that the present group of petitions pertains to matters under the labour laws and may be sent for hearing before the apprpriate bench. Then, this group of petitions came up before this court. In petition, in cause title nowhere it is mentioned as to whether the matter is connected with the labour laws or not. Following averment has been made in the petition :

> "In the matter under Article 226 of the Constitution of India;
> And
> In the matter under Article 14 of

the Constitution of India;

And

In the matter about order dated 30th June, 2006 seeking to illegally terminate the services of petitioners as temporary regular Mazdoor

And

In the matter between"

It is also required to be noted that it is nowhere mentioned in the petition as to which provision of labour law has been attracted in this petition or violated by the respondents while passing the order of termination against petitioner. I have perused entire petition. Such averments have not been made in the memo of petition either specifically or generally. When the matter was opened before this Court, question was asked by this court to the learned Senior Advocate for the petitioner as to how these matters are pertaining to the matters under the labour laws because this court is having jurisdiction only in labour matters. It was answered by the learned Senior Advocate that the petitioner is temporary regular mazdoor, therefore, he is covered by the definition

of 'workman' given under sec. 2(s) of the ID Act, 1947, therefore, present petitions are labour matters. Except that, for satisfying the requirement, no other submission is made. In the present petitions, order dated 30.6.2006 – notice for removal from service is challenged by the petitionres. It is alleged against the petitioners that during the regularization as a regular mazdoor, you have furnished false information and committed grave misconduct for employment purpose and rendered unfit and unsuitable for continuing in service. Before passing this order on 30.6.2006, four notices were served upon the petitioner to show cause. Explanation given by the petitioner was not found satisfactory, therefore, notice dated 30.6.2006 for removal from service has been issued. Notice for removal from service has to be considered,therefore, it is reproduced as under:

> “No. Q-10/BMP/SDOT BCH/06-07
>
> Dtd.30.6.2006
>
> Sub : Reg. Notice of removal from the service. As per SDE (Admn.), Bharuch letter No. E-t/RM/Rectt./77 dtd. 06.08.2001 regarding regularization of TRM to RM, it had gone through the documents submitted by you and found that,

(1)You produced working days for the period of 01.01.1985 to 31.10.1985 under Shri K.M. Baria, LMT, RE Division, Baroda and countersigned by Shri MI Patel AET, RE Division Baroda. But as per the statement of Shri K.M. Baria, dtd. 29.07.2004, addressed to DE (Vigilance), O/o. GMTD, Bharuch, he was not working on the same pst w.e.f. 13.04.1985 onwards.

(2) You also submitted records of working days for the period of 01.01.1985 to 28.02.1985 under Shri AI Shaikh, SIT Jambusar and countersigned by SDOT Bharuch vide MR No. 41585/7 and 41585/19 respectively.

(3)The above reveals that working days certificates for the period of 01.01.1985 to 28.02.1985 from the two separate units.

Thus, the said documents reveals that the working days certificate produced by you for the period mentioned above for getting employment are false.

You were given opportunities by serving notices vide this office letter No.

(1) Q-BMP/01-02 dtd. 13.8.2001

(2) Q-BMP/TRM/03-04/dtd.27.1.2004

(3) Q-BMP/TRM/03-04/dtd. 1.3.2004

(4) Q-BMP/TRM/03-04/dtd. 13.4.2004

Explanations given by you are not satisfactory as per charges framed against you and monthing is clear in your reply.

Thus, during the regularization as RM, you have furnished false informations and committed grave misconduct for employment purpose and renders unfit and unsuitable for continuing in service.

I, Shri KV Parmar, SDOT, Bharuch hereby giventhe notice to Shri Bharat Mathur Patel, TRM Hinglot that, is services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice served to him."

(4)As per the contention raised by the learned Senior Advocate Mr.Mihir Thakor, the petitioners are workmen covered by the definition of workman under section 2(s) of the ID Act, 1947, and, therefore, present petitioners are the labour matters. If that is so, then, such termination can be challenged by the petitioners before the labour court/industrial tribunal under the machinery of the ID Act, 1947. Section 2(A) of the ID Act, 1947 is available to petitionres to raise an industrial dispute against such termination which can be referred to for adjudication. The Respondent BSNL is covered by the definition of industry under section 2(j) of the ID Act, 1947 and the challenge to order of termination is covered by definition of section 2(k) of the ID Act, 1947. So, all ingredients are satisfied for approaching the forum under the machinery of the ID Act, 1947 which is also

made clear in Rule 8 relied upon by the petitioner. This is the alternative equally effective statutory remedy available to petitioners and labour court/industrial tribunal can also examine the question as to whether the principles of natural justice have been violated or not and whether the departmental inquiry is necessary or not in such a case and whether the statutory rules of departmental inquiry can be enforced against respondent or not can also be examined by the labour court/industrial tribunal. It being a preliminary issue, labour court/industrial tribunal has jurisdiction to decide the same and they are competent enough to grant full relief to petitioners in case if the termination order is set aside with reinstatement, continuity of service and full back wages for intervening period but the labour court cannot grant interim relief while exercising powers under section 10(1) of the ID Act,

1947. Non availability of interim relief cannot give any right to petitioners to contend before this court that this court must entertain petition since labour court is not having power to examine matter for interim relief. Termination order is based on misconduct. It is a settled law laid down by the apex court that merely because the forum before which the alternative remedy is available is not having power to grant interim relief, it cannot become a ground to entertain the writ petition. Here, since the petitioners can challenge the impugned action under the machinery of the ID Act, 1947, these petitions cannot be entertained.

(5)Another contention raised by the learned Senior Advocate Mr. Thakor relying upon item no. 8 and 9 of the rules is that the action is also violative of the principles of natural justice. Therefore, item no. 8 and 9 of the rules are reproduced as under:

“8. Despite conforment of

> temporary status,the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947 on the ground of non availability of work. A casual labourer with temporary status canquit service by giving one month's notice.
>
> 9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services. “

(6)Relying upon the said clauses of the rules, it was submitted by Mr. Thakore that in case of misconduct, inquiry is necessary. This inquiry as contemplated under rule 9 cannot suggest only full flagged inquiry. Status of the petitioner is temporary regular

mazdoor. He is not a permanent employee governed by the statutory rules framed under Article 309 of the Constitution of India. Therefore, from the notices referred to herein it prima facie appears that the respondents have followed the procedure to give reasonable opportunity and to prove misconduct in inquiry. Four notices were given to the petitioner before taking the final decision. Reply given by the petitioner was considered before taking the final decision. These are undisputed facts emerging from the record, therefore, the submission made by the learned Senior Advocate Mr.Mihir Thakore that the respondents have committed breach of the principles of natural justice in passing the impugned order and, therefore, writ petition is maintainable is not correct and as such, the decision in case of UP State Spinning Company Ltd. Versus R.S. Pandey and another reported in 2005 (8) SCC 264= JT 2005 (12) SC 242 is not applicable to the peculiar

facts of this case. Learned Advocate Mr. Thakor has relied upon paragraph 11, 12 and 16 of the said decision. Same are, therefore, reproduced as under :

> “11.Except for a period when Article 226 was amended by the Constitution (Forty Second Amendment)Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitaiton. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy.If somebody approaches the High Court without availing alternative remedy

provided, the High Court should ensure that he has made out a strong case or there exists good grounds to invoke extra ordinary jurisdiction.

12. Constitution Benches of this court in KS Rashid and son versus Income Tax Investigation Commission, Sangramsinh v/s. Election Tribunal, Kotah, in Union of India v/s. TR Verma State of UP versus Mohd. Mooh and KS Venkatraman and Co. (P) Ltd. v. State of Madras held that Article 226 of the Constitution confers on all the High Courts a very vide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The court, in extra ordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

16. If, as was noted in Ram and Shyam

v. State of Haryana and Ors. [AIR 1985 SC 1147], the appeal is from “Caeser to Caeser's wife the existence of alternative remedy would be a mirage and an exercise in futility.In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy, this court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in First

> Income Tax Officer, Salem v.M/s. Short Brothers (P) Ltd. [1966 (3) SCR 84] and State of UP and Ors. v.M/s. Indian Hume Pipe CO. Ltd. [1977 (2) SCC 724]. That being the position we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby tom ove the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

Relying upon the aforesaid decision, he

vehemently submitted that in case of violation of the principles of natural justice, normally, High Court can interfere in such matters. Here, looking to the notices of termination read with rule 9, it is not clear that it suggests full flagged inquiry which is in the mind of the learned senior Advocate Mr. Mihir Thakore. Inquiry contemplated under rule 9 is not interpreted or defined or for that,no submission is made, therefore,whatever steps being taken before coming to the conclusion by the respondents, reasonable opportunity was given. Considering the issuance of four notices before taking the final decision as referred to herein above, it cannot be said that it is a case of no opportunity. In view of the notices issued by respondents and reply given by petitioner and consideration thereof in the final order, prima facie, it cannot be said to be a case of no opportunity and, therefore, it is prima facie incorrect to contend that there is breach of the principles of natural justice. The process

undertaken may be satisfying the inquiry as mentioned in rule 9. SO, decision relied upon by Mr.Thakore in case of UP State Spinning Company Ltd. Versus R.S. Pandey and another (supra) would not be helpful to the petitioner in the facts of this case because considering rule 9 read with notices of termination, there is no prima facie breach of the principles of natural justice because opportunity was given by issuing notices and reply of petitioners were considered by respondents before taking final decision.

In **Binny Ltd. And anotehr v. V.Sadasivan and others AIR 2005 SC 3202**, apex court observed as under **in para 29, 31 and 33 :**

> “29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or

a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England 3rd ed. Vol. 30, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public

and not for private profit." There cannot be any general definition of public authority or public action. The facts of each case decide the point.

30. xxx

31. **The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in State of U.P. v. Bridge and Roof Co., (1996) 6 SCC 22 and also in Kerala State Electricity Board v. Kurien E. Kalathil (2000) 6 SCC 295. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a**

contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

33. We are unable to perceive any public element in the termination of the employees by the appellant in Civil Appeal No. 1976 of 1998 and the remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments especially in view of the disputed questions involved as regards the status of employees and other matters. So also, in the civil appeal arising out of SLP (Civil) No. 6016 of 2002, the writ petition has been rightly dismissed by the High Court. We see no merit in the contention advanced by the appellant therein. The High Court rightly held that there is no public law element and the remedy open to the appellant is to seek appropriate relief other than judicial review of the action taken by the respondent company. " [Emphasis supplied.].

Decision in case of RS Pandey (supra) relied upon by the learned Sr. Advocate Mr. Thakore is going against his submission because in that case

order passed by High Court was set aside by entertaining writ petition against the order of termination. In para 20 of said decision, it is observed as under:

> Para 20 “Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition. Usually when writ petition is entertained notwithstanding availability of alternative remedy and issues are decided on merits, this court is slow to interfere merely on the ground of availability of alternative remedy. But the facts of the present case have special features, which warrant interference.”

Here, looking to the facts of the case on hand, special features of the case on hand are not present as prior notices were served before issuance of notice of termiantion, rule 9 of the rules, it cannot be said that there is no inquiry at all and, therefore, this case is not having such special features which warrant interference and, therefore, petitions cannot be entertained

in view of the availability of alternative remedy.

In New Okhla Industrial Development Authority versus Kendriya Karamchari Sahkari Grih Nirman Samiti 2003 (3) Supreme 617, it is observed as under:

> “Held, A High Court is not deprived of its jurisdiction to entertain a petition merely because in considering petitioner's right to relief question of fact may fall to be determined as pointed out in Gunwant Kaur v. Municipal Committee (AIR 1970 SC 802). In a petition under Article 226, the High Court has jurisdiction to try issues of law and fact. Where, however, the petition raises complex question of fact, the court should not entertain the petition. In Mahanta Moti Das v. SP Sahid (AIR 1959 SC 942) the High Court refused to go into the question as to whether trusts were public or private trusts as the question had involved investigation of complicated facts and recording of

evidence. This view was upheld. Thus, if there is a question on which there is a serious dispute which cannot be satisfactorily decided without taking evidence, it should not be decided in a writ proceedings (See Union of India v. TR Verma AIR 1957 SC 882).If disputed questions of fact araise and the High Court is of the view that those may not be appropriately tried in a writ petition, the High Court has jurisdiction to refuse to try those questions and relegate the party to his normal remedy to obtain redress in a suit. In a petition under Article 226, the High Court has jurisdiction to try both issues of fact and law. When petition raises complex questions of fact which may for their determination require oral evidence to be taken and on that account the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court should ordinarily decline to try the petition. Thus a High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the

> petitioner's right question of fact may fall to be determined. Ultimately the question is one of discretion which is to be exercised in conformity with judicial principles. “

Similarly, in recent decision in Samjana M. Wig v/s. Hindustan Petroleum Corporation reported in 2005 (8) SCC 242, the apex court has considered same aspect of maintainability of writ petition when alternative remedy is available. Apex court observed as under:

> “Writ petition maintainable where lis involves public law character and forum chosen by the parties would not be in a position to grant appropriate relief but court to keep in view that ordinarily writ petition would not be entertained if it involves serious disputed questions of fact arising out of contract qua contract. Question as to when discretionary jurisdiction is to be exercised or refused to be exercised has to be determined having regard to the facts and circumstances of each case. No hard and fast rule can be laid down in this regard.”

As referred above, this court is having discretionary powers to entertain or not to entertain a writ petition. Looking to the facts on record as well as considering the circumstances and conduct of the petitioner not allow the matter to be decided by service bench and request during the course of arguments before the service bench for transfer before the labour bench, being a labour matter knowing fully well that no prvisions of any labour laws has been mentioned in the petition including the title, normally, it has to be specified in the matter that it is relating to which law but not specified in this matter and office has circulated the matter before the service bench and when specific question was asked as to how it would become a labour matter, it was answered by the learned Senior Advocate Mr. Thakore that the petitioners are covered by the definition of workman under section 2(s) of the workman and, therefore, it would become a labour matter.

Logically, it is a good argument but after thought just to reply query of the court. Looking to the challenge of notice of termination dated 30.6.2006,main emphasis about non compliance of the principles of natural justice does not seems to be correct, of course, prima facie, read with rule 9 as relied upon by the learned senior advocate Mr.Thakore. Therefore, according to my opinion, this being a prima facie disputed question of fact because what type of inquiry contemplated under rule 9, writ petitions cannot be entertained. Another aspect is that if the termination is challenged under the machinery of the ID Act, 1947 before the appropriate forum, then the labour court is having power to grant full relief and is empowered to restore the original position as if the order of termination has not been passed, therefore,considering this aspect of the matter, according to my opinion, decision relied upon by Mr. Thakore is not applicable to the facts of this case and this court has also considered other decision and

observed that no hard and fast rule can be laid down in this regard.

Here, considering this matter from different angle, if this court would entertain such type of petition then, the machinery provided under the ID Act for adjudication of such matters would remain without work and each and every petitioner would approach this court by invoking extra ordinary jurisdiction because each and every case of misconduct would be having a scope of argument about the breach of the principles of natural justice. If the order of dismissal is straight way challenged by workman against State Authority pointing out that the principles of natural justice have been violated praying to entertain petition, and if such prayer is entertained, the forum created and constituted by enacting special legislation would remain without work and High Court will not be able to concentrate or pay attention to important matters and therefore, whenever special

legislation is providing any special remedy, then, it is not proper for this court to entertain writ petition for which alternative statutory remedy is available to workman. Therefore, according to my opinion, such petitions cannot be entertained by this court and this court has to take care in exercising extra ordinary jurisdiction and not to entertain such petition. It is true that the labour court may not be able to grant interim relief but this may not be a ground for contending that the remedy available before the labour court is not an effective remedy as it is not able to grant interim relief because ultimately labour court would be able to examine disputed questions of fact on the basis of oral and documentary evidence which this court cannot do in exercise of powers under Article 226/227 of the Constitution of India.

In Secretary, Minor Irrigation & Rural Engineering Services UP and Others Versus Sahngoo Ram Arya and Another reported in 2002 SCC (L&S)

775, same aspect was considered by the Apex Court. It was observed by apex court as under in paragraph 12 :

> “12. Mr. Sunil Gupta, learned counsel appearing for the petitioner contended that the remedy before the Tribunal under the UP Public Services (Tribunal) Act is wholly illusory inasmuch as the Tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the petitioner to a fresh proceeding before the said Tribunal. We do not agree with these arguments of the learned counsel. When the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to bypass the said Tribunal. In an appropriate case after entertaining the petitions by an aggrieved party if the Tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved

> party can seek remedy under Article 226 of the Constitution but that is no ground to bypass the said Tribunal in the first instance itself. Having perused the impugned order,we find no infirmity whatsoever in the said order and the High Court was justified in directing the petitioner to approach the Tribunal. In the said view of the matter, the appeals are dismissed. No costs."

Another aspect is also required to be noted that when the petition has been filed by the petitioners raising grievance against the notice of termination dated 30.6.2006, then, it is the duty of the party before approaching this Court to first approach the authority concerned against the action sought to be challenged in a petition. In this case, admittedly, petitioners have approached this Court without first approaching the respondents in the subject matter of this petition. This petition challenging the notice of termination dated 30.6.2006 is filed on 18.7.2006

as the affidavit of petitioner is dated 19.7.2006. Matter was circulated on 20.7.2006 and it was kept for hearing on 21.7.2006. In between from the date of receipt of notice of termination till the date of filing of petition, whether the petitioners have approached the respondents or not in the subject matter of petition, that is not clear and no submission is made in that regard.

Petitioners have not approached the respondent authority raising contention about breach of the principles of natural justice as well as grievance that no full flagged inquiry has been conducted against the petitioners. It is not coming out from the record and at the same time, it is not submitted by the learned advocate for the petitioner that the petitioners have approached the respondents in the subject matter of these petitions prior to filing of these petitions and such representation is pending and/or decided by the respondents. In view of this also, direct petition without initial

approach to the respondents cannot be entertained and mandamus in such a petitions cannot be issued. On this ground also, these petitions cannot be entertained as the petitioners have not first approached the respondents. Therefore, considering these entire facts and circumstances of this case, according to my opinion, looking to the facts, circumstances and misconduct as narrated in the notice of termination, it is not a case wherein this court can exercise discretionary power in favour of the petitioner under Article 226 of the Constitution of India. Therefore, these petitions are required to be rejected on these two grounds, one of availability of alternative equally efficacious statutory remedy and the another is that the petitioners have directly approached this court without first approaching the respondents in the subject matter of these petitions. Therefore, this court is not entertaining these petitions and dismissing the petitions without expressing any opinion on the merits of the matter.

This aspect has been considered by the apex court in Saraswati Industrial Syndicate Ltd. Etc. v.Union of India reported in AIR 1975 SC 460. In para 24 of said decision, apex court observed as under:

> “24. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi judicial proceeding was before the High Court. The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English Practice. Nevertheless, the well recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in case of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of Mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edition Vol.13, p.106) :

> "As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal."

In In State of Haryana and another v. Chanan Mal etc. reported in AIR 1976 SC 1654, it is observed as under in Head Note (D):

> "**(D) Constitution of India, Article 226 – Mandamus – Duty of petitioners.**
>
> Any petitioner who applies for a writ or order in the nature of a Mandamus should, in compliance with a well known rule of practice, ordinarily first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established."

In Amrit Lal Berry (In W.P. NO.463 of 1971), KN Kapur and others (In WP No. 2004 of 1973), v. Collector of Central Excise, Central Revenue and others reported in AIR 1975 SC 538, apex court observed as under in para 25 of decision:

> “25.In the petition of K.N. Kapur and others,we do not even find an assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognized by this court in Kamini Kumar Das v. State of West Bengal, AIR 1972 SC 2060 at p. 2065 that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus would also operate against petitioners.”

In case of Gujarat Mazdoor Sabha and Commissioner of Labour and others reported in 2006-I-LLJ page 546, Division Bench of this Court observed as under in para 5 and 6:

> “5.In our considered opinion, when the Labour Laws provide for a

> procedural forum, then, the same cannot be short-circuited simply because they are time consuming. Even otherwise, if we start entertaining such applications, then, any order made by us or any writ issued by us, would again lead to a problem. This Court, after issuing the writs, will have to act as a Labour Court for enforcing the writs, which, in fact, is not the intention of the Constitution of India.
>
> 6.When the law provides for a proper forum, then, any person, for redressal of his grievance, must approach to the said forum because the Officers are trained, they know how to handle the matters and the law further provides that in what manner, such orders can be executed. "

In result, in view of the peculiar facts of this case and the decisions considered herein above on the aforesaid two grounds, namely availability of alternative equally efficacious statutory remedy and since petitioners have

directly filed this petition without first approaching the respondents, these petitions are not entertained and same are dismissed.

It is clarified that the certain observations made while dealing with the submissions made by the learned Senior Advocate Mr. Mihir J.Thakore on the basis of prima facie consideratin of the matter shall not come in the way of the petitioners when the petitioners will raise industrial dispute before the appropriate forum under the machinery of the ID Act and such forum shall decide such matter strictly in accordance with law and on merits without being influenced by the observations made by this court on the basis of prima facie consideration.

(H.K. Rathod,J.)

Vyas